

RSA-5902-2016 (O&M)
Date of decision: 10.08.2023

Raj Kaur ...Appellant

Versus

Surjit Kaur and Another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vivek Thakur, Advocate
for the appellant.

Mr. M.S. Dhami, Advocate
for the respondent No.1.

HARKESH MANUJA J. (ORAL)

By way of present appeal, challenge has been made to the judgments and decrees dated 30.09.2014 and 17.08.2016 passed by the Courts below, whereby, a suit for specific performance filed at the instance of respondents/plaintiffs was partly decreed, holding them entitled for alternate relief of recovery of Rs.18,20,000/- along with simple interest @ 9 % per annum from the date of filing of the suit with future interest @ 6% per annum from the date of decree, till its actual realization.

2. Very briefly, based on an agreement to sell dated 14.06.2011 respondents/plaintiffs filed a suit for possession by way of specific performance against the appellant/defendant while pleading that the total sale consideration was Rs.20,00,000/- out of which an amount of Rs.18,20,000/- was paid as an earnest money, with 14.06.2012 being the target date. It was further pleaded that due to failure on the part of appellant/defendant to get the sale deed executed, a suit for specific performance was filed by the respondents/plaintiffs.

3. Upon notice, appellant/defendant contested the suit by filing written statement while disputing the execution of the agreement to sell dated 14.06.2011. It was submitted by the appellant/defendant that on an earlier occasion an agreement to sell regarding sale of her residential house was entered into between the parties on 22.12.2009, wherein total sale consideration mentioned was Rs.12,00,000/- out of which Rs.9,30,000/- was taken as loan from the plaintiffs with target date being 21.12.2010. It was further submitted that appellant/defendant returned the aforesaid loan amount followed by cancellation of agreement to sell dated 22.12.2009. It was also pleaded that the respondents/plaintiffs being money-lender misused the thumb impressions of appellant and forged the document in question.

4. The trial Court vide judgment and decree dated 30.09.2014 though declined the grant of decree of possession by way of specific performance, however, awarded alternate relief of recovery of Rs.18,20,000/- in favour of respondents/plaintiffs along with interest. Aggrieved thereof, the appellant/defendant filed first appeal before the learned Additional District Judge, Kapurthala, however, the same was also dismissed vide judgment and decree dated 17.08.2016.

5. Impugning the aforesaid judgments and decrees, learned counsel for the appellant vehemently submits that no payment was ever received by the appellant as the document in question i.e. agreement to sell dated 14.06.2011 was never executed between the parties. He further submits that a fraud was played upon the appellant/defendant as her thumb impressions were misused by the respondents/plaintiffs being money lender whereas the entire loan amount which was received by the appellants/defendants stood discharged with the cancellation of the earlier agreement to sell dated 22.12.2009.

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6. On the other hand, learned counsel representing the respondents/plaintiffs submits that once the thumb impressions over the document dated 14.06.2011 were admitted by the appellant/defendant, the burden was upon her to prove the factum of alleged fraud.

7. I have heard the arguments of learned counsels for the parties and have gone through the paper book with their able assistance.

8. After hearing the arguments of learned counsels for the parties, I am unable to find substance in the submissions made on behalf of the appellant/defendant in view of the fact that once thumb impressions over the document dated 14.06.2011 were not denied/disputed by the appellant/defendant, the burden was upon her to prove the factum of alleged forgery. Even Issue No.5 qua the said contention was specifically framed by the Courts below.

9. From the evidence available on record as well as the findings recorded by the Courts below, it is evident that the appellant/defendant failed to substantiate the plea of fraud whereas on the other hand, the respondents/plaintiffs duly proved the valid execution of the agreement to sell dated 14.06.2011 by examining Deed Writer as PW-3 as well as one of the marginal witness, namely Jarnail Singh. Nothing substantial has been pointed out from the records about misreading or non-consideration of any relevant evidence by the Courts below.

10. In view of above facts and circumstances, I do not find any illegality or perversity in the judgments passed by the Courts below granting alternative relief of recovery of Rs.18,20,000/- along with interest in favour of respondents/plaintiffs.

11. Accordingly, in view of the discussion made hereinabove, finding no illegality or perversity in the judgments and decrees dated 30.09.2014 and 17.08.2016 passed by the Courts below, the present appeal being devoid of any merit deserves to be dismissed and the same is accordingly dismissed.

Pending application(s), if any, also stand(s) dismissed.

10.08.2023

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Whether speaking/reasoned

Whether reportable

(HARKESH MANUJA)

JUDGE

Yes/No

Yes/No